IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 2144 of 2005 (O&M)
Date of decision : 9.2.2007

Sewa Singh & Anr.

.....Petitioners.

Versus

Balwant Singh & Anr.

.....Respondents.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. Gaurav Mohunta, Advocate.

Mr. Harsh Aggarwal, Advocate.

Mr. Girish Agnihotri, Advocate.

Mr. Jaswant Singh, Advocate.

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VINOD K. SHARMA,J.(ORAL)

C.M. No. 20857-CII of 2006

The present application has been filed by the applicant under Order 1 Rule 8-A read with section 151 of the Code of Civil Procedure seeking permission of this Court to join the proceedings as intervener.

The present revision petition arises out of an interlocutory order vide which the temporary injunction application has been partly allowed. The applicants have moved this application to intervene the matter on the ground that some agreement to sell has been executed. The agreement to sell does not give any right or title to the applicant and, therefore, the present application being totally misconceived and is dismissed.

C.M. No. 20858-CII of 2006

The application of the applicant for being impleaded as intervener has been rejected by this Court.

This application, on behalf of the applicant, who are not party to the suit is not competent.

Dismissed.

C.M. No. 10913-CII of 2006

The present application has been moved by the petitioner herein under Order 1 Rule 10 C.P.C. for impleading the persons mentioned in the application as party in the present revision petition on the ground that in violation of the order of status quo the respondents herein entered into an agreement to sell with the applicant. The petitioner is claiming right in the suit property being an absolute owner of the property, therefore, the persons named in the application are neither necessary nor proper party. Accordingly, this application is dismissed.

C.R.No. 2144 of 2005

The present revision petition has been filed against the order dated 14.3.2005 passed by the learned Addl. District Judge, Patiala vide which appeal filed by the respondent herein was partly allowed and the injunction granted by the learned trial Court in favour of the petitioner was ordered to be modified.

The petitioner had filed a suit as mortgagee claiming that in view of non-redemption of the mortgage they have become owner of the property in dispute. The learned trial Court on an application moved under Order 39 Rules 1 & 2 grated injunction in favour of the petitioner restraining the respondent herein from interfering in the possession or

alienating the property in dispute.

It was brought to the notice of the learned lower appellate Court that the respondents have already deposited the mortgaged money and mutation for redemption had been sanctioned in their favour. It was also noticed that the proceedings with regard to the redemption of property in view of the deposit of mortgaged money was pending before the Revenue Court. The learned lower appellate Court, therefore, came to the prima facie conclusion that the respondents were the owners of the property and,therefore, could not be restrained from alienating the property subject to the mortgagee rights of the petitioners. The learned lower appellate Court, therefore, was right in vacating the stay qua alienation. The rights of the petitioners were duly protected by granting injunction qua dispossession, in view of the fact that the petitioners were mortgagee could only be evicted after following due process of law i.e. by way of redemption of mortgage.

There is no illegality in exercise of jurisdiction by the learned lower appellate Court which may call for interference by this Court in revision jurisdiction.

Dismissed.

9.2.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**